



STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT

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March 8, 2013

The Honorable Pam Roach, Chair
Governmental Operations Committee
Washington State Senate
P.O. Box 40431
Olympia, WA 98504-0431

Dear Senator Roach:

I am writing in response to your February 25, 2013, letter regarding authority granted to agencies by Initiative 1185 (I-1185). Your letter requests “a complete list of the specific state agencies, what fee-raising authority was delegated to them, and what unused authority has now been put back in the legislature by I-1185.” You also request to know “if state agencies have raised fees after the effective date of I-1185.”

In determining whether I-1185 would affect fees that were legislatively authorized prior to the effective date of the Initiative, the Office of Financial Management (OFM) reviewed two informal opinions by the Attorney General’s Office that discussed the impacts of I-1053. See Office of Attorney General Informal Opinion to Senator Pam Roach (December 20, 2010) (Roach Opinion), and the Office of Attorney General Informal Opinion to Senator Don Benton (February 17, 2011) (Benton Opinion). According to the Roach Opinion at pages 5-6:

Statutory amendments are generally presumed to operate prospectively, addressing events that occur after the statute takes effect. *State v. T.K.*, 139 Wn.2d 320, 329, 987 P.2d 63 (1999). It, therefore, follows that the voters intended I-1053 to provide that fees can be increased only if, after the effective date of I-1053, the legislature so approves. In manner of speaking, I-1053 hit the “reset” button on legislative approval for the imposition or increase of fees, limiting such actions to those approved anew by the legislature after the effective date of the measure.

The informal opinion at page 6 goes on to describe another instance where the initiative would not impact fees:

If a statute either specifies the amount of a fee or sets forth a formula for calculating the fee such that the agency implementation is merely ministerial, then I-1053 does not require further legislative approval. In such a circumstance, the legislature has already essentially established the fee by its direct action.

Because I-1053 and I-1185 made similar amendments to RCW 43.135.055(1), OFM assumed the same conclusions could be drawn regarding the impact that I-1185 had on fees and fee increases. Deputy Solicitor General Jeffrey T. Even essentially agreed with this analysis in a letter he sent to you on January 9, 2013. See Even Letter to Senator Pam Roach (January 9, 2013).

Accordingly, I-1185 did not impact the imposition of fees or fee increases that were legislatively authorized prior to its effective date. In addition, fees set in statute (either a specific amount or by formula) were also not affected by the Initiative. However, I-1185 requires some state agencies to obtain new legislative approval to impose or increase certain fees after December 6, 2012, the effective date of the Initiative.

In our fiscal impact statement for I-1185, OFM identified new legislatively authorized fees or fee increases for which the statutory authorization to impose the fees would have been revoked if the voters approved the Initiative. OFM's fiscal impact statement can be found at: http://www.ofm.wa.gov/initiatives/2012/1185_fiscal_impact.pdf. After releasing the fiscal impact statement, but prior to the passage of I-1185, some of these agencies acted on their authority and imposed the new legislatively authorized fees or fee increases.

The following fees were impacted by I-1185 and would therefore require new legislative approval if the agency were to impose or increase the fee:

- Washington State Transportation Commission:
 - Interstate 405 high-occupancy vehicle lanes in Engrossed House Bill 1382 (2011).
 - The Alaskan Way Viaduct replacement project in Substitute Senate Bill 6444 (2012).
 - The Columbia River Crossing project in Engrossed Substitute Senate Bill 6445 (2012).
 - Tacoma Narrows Bridge toll adjustments in Substitute Senate Bill 5700 (2011).
- Utilities and Transportation Commission:
 - Certification of private wastewater operators in Second Substitute Senate Bill 5034 (2011).
- Washington State Patrol:
 - Notary Service Fee

In regards to your question of whether any state agencies imposed new fees or increased fees in contravention of I-1185, OFM is not aware of any circumstance where this occurred.

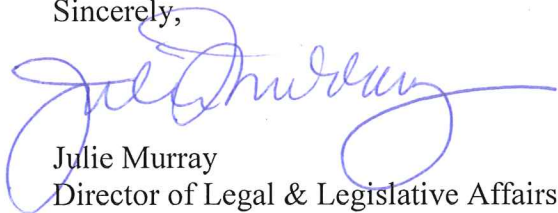
OFM asked state agencies to provide current information about charges that meet the definition of a fee under RCW 43.135.055 and recently completed a 2012 Fee Inventory that can be found at: <http://ofm.wa.gov/budget/fees/2012/default.asp>. Fees set in statute and by administrative action are included in the inventory. However, the inventory does not include charges, such as penalties and premiums, which might be considered fees for other purposes. This inventory

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provides information by state agency, for you and for the general public, that includes what fee-raising authority was delegated to the agency; the statutory authority for the fee and date enacted; a description of the fee; the fee methodology; and the fee payers. If you have additional questions regarding a specific fee, we suggest that you contact the agency imposing the fee directly.

I trust that this information answers your questions. Please contact me if you need additional information.

Sincerely,



Julie Murray
Director of Legal & Legislative Affairs

cc: David Schumacher, Director, OFM